UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

TOUCHTUNES MUSIC CORP., Plaintiff, v. ROWE INTERNATIONAL CORP., ARACHNID, INC., AMI ENTERTAINMENT, INC. and MERIT INDUSTRIES, INC. d/b/a/ MERIT ENTERTAINMENT, Defendants.	Civil Action No. 07-cv-11450-RWS
AND RELATED COUNTERCLAIMS	

DECLARATION OF MICHAEL TOOKER

I, Michael Tooker, hereby declare and state as follows:

1. I am the Senior Vice President, Engineering and Operations at TouchTunes Music Corporation. I am submitting this Declaration in support of TouchTunes' Motion for Summary Judgment of Noninfringement in the litigation against Arachnid.

2. I have firsthand knowledge regarding the transmission, storage and playback of music on all jukeboxes and related products in TouchTunes' jukebox system, including the particular format of that music and the reasons that TouchTunes chose that format.

3. It is my understanding that Arachnid accuses TouchTunes of infringing U.S. Patent No. 6,397,189; U.S. Patent No. 6,381,575; U.S. Patent No. 5,848,398; and/or U.S. Patent No. 6,970,834 by virtue of the following accused products:

- Allegro;
- Allegro MX-1;
- Allegro MX-1v;
- Genesis II,
- Maestro;
- Maestro II;
- Ovation;
- Ovation II;
- Rhapsody;
- "TouchTunes Network" (identified as including, at least, workstations, servers and TouchTunes jukeboxes);
- "TouchTunes Network including a PlayPorTT";
- "Gen 3 TouchTunes jukeboxes communicating with the TouchTunes server over a cellular network"; and
- "Gen 3 TouchTunes jukeboxes connected to a PlayPorTT."

4. It is also my understanding that Arachnid has admitted to the Court that all of its asserted patents are limited to the use of songs that are "studio quality musical recordings." I also understand that Arachnid has defined "studio quality musical recordings" to require that the music have a specific, minimum amount of data per minute of stereo sound, or "size-per-minute." In particular, I understand that Arachnid has defined "studio quality musical recordings" to require that the music have a size-per-minute of 10 megabytes ("MB"), such that, for every minute of audio playback, studio quality musical recordings contain at least 10 MB of data.

5. No TouchTunes product, including any of the products that Arachnid accuses of infringement and regardless of software generation, has downloaded, stored or played any studio quality musical recording. Nor is any TouchTunes jukebox even capable of playing studio quality musical recordings. Instead, before any music can be introduced into and used in TouchTunes' jukebox system, the music must first be compressed to a size-per-minute of 0.94 MB using a technique called MPEG-1 Audio Layer 3. The resulting music is in a format known as "MP3-128."

6. When a song is compressed to the MP3-128 format, about 90% of the data is removed from the original, studio quality version of the song. The resulting MP3-128 version of the song is 90% smaller than the studio quality version. In addition, the quality of the resulting MP3-128 version of the song is much lower than that of the studio quality version.

7. The MP3-128 song is transmitted to and stored in TouchTunes' jukeboxes in an encrypted format for security purposes. Throughout the encryption (and subsequent decryption) processes, the song remains an MP3-128 song.

8. TouchTunes chose not to use studio quality music in its jukebox system for at least two important reasons. First, TouchTunes strives to offer its customers the largest selection of music possible on each jukebox. The complete database of music available on the TouchTunes' system is stored in a database at TouchTunes' facilities in Montreal, Canada, and a subset of that music is stored in a computer memory on each jukebox. Studio quality music requires very large amounts of computer memory to store each song (at least about 30MB of memory for a typical three-minute song). As a result, TouchTunes decided early on to design its jukebox system in a way that avoided the use of studio quality songs. TouchTunes decided to use music files that are compressed to the MP3-128 format in order to maximize the number of songs that TouchTunes can store on its jukeboxes without requiring excessively large and expensive memories, and without requiring otherwise unnecessary replacement of smaller memories. Because conversion of a studio quality song to the MP3-128 format removes large amounts of data from the song, the quality of an MP3-128 music song is far less than that of a studio quality musical recording.

9. In other words, TouchTunes elected to forego any use of studio quality musical recordings in favor of smaller files and lower quality music. Each MP3-128 song on TouchTunes' system requires only about 1/10th the storage space of a corresponding studio quality song. Thus, TouchTunes decided to trade music quality for the ability to store much more music on each jukebox.

10. Another reason why TouchTunes decided not to use studio quality songs in its jukebox system is that it wanted to be able to transmit songs quickly from its Montreal facility to each individual jukebox, even if there is no high-speed connection available at the jukebox location. When designing its system, TouchTunes was aware that many of its potential jukebox customers only had a low-speed data connection, such as dial-up connections, at the jukebox location. TouchTunes decided that studio quality songs were simply too large to be downloaded quickly to its jukeboxes over a low-speed connection. In order to avoid excluding potential customers simply because they were limited to a low-speed data connection, TouchTunes decided that it would not use any studio quality songs in its system. Instead, TouchTunes decided to limit the operation of its jukeboxes to songs having lower music quality. The lower size-per-minute, and resulting lower quality, provided by the MP3-128 format enables much faster downloads as compared to studio quality musical recordings. By using MP3-128 songs, all of TouchTunes' customers are able to quickly download songs from TouchTunes' Montreal database, regardless of the type of connection that is available at the jukebox location. Today, TouchTunes has a significant customer base that relies on low-speed connections to download music from TouchTunes' Montreal facility. This customer base would not be possible if TouchTunes used studio quality songs.

11. Thus, in order to accommodate customers having slow data connections, TouchTunes decided to use music that is only about 1/10th the size of studio quality musical recordings and that is much lower in quality. That is, TouchTunes has traded music quality in favor of smaller song files having reduced storage requirements and faster download capability.

12. In summary, TouchTunes has never used any studio quality musical recording on any of its products, including its jukeboxes. For example, no TouchTunes jukebox has ever downloaded, stored or played any studio quality musical recording.

13. In accordance with 28 U.S.C. § 1746, I hereby verify, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct.

Dated: March 14, 2010

Michael Tooker